IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2854 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT DINESHCHANDRA PANDYA
Versus
HYDRABAD ALLWYN LTD., AND ANOTHER

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Appearance :
Mr AK Clerk for the petitioner.
RULE NOT RECD BACK for Respondent No. 1.
Mr Prabhav Mehta for Nanavati Associates for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 08/08/2006

ORAL JUDGMENT

By filing this petition, the petitioner has prayed that respondent authorities may be directed to treat the petitioner as a 'confirmed Watch Sales Representative' with effect from 7-12-1987 and to grant him all consequential benefits. It is also prayed that respondent – company may

be directed to assign him the work of Watch Sales Representative and also direct the respondent authorities to designate the petitioner as Watch Sales Representative.

Case of the petitioner is that he was appointed as Watch Sales Representative by appointment order dated 7-11-1985. Thereafter, the petitioner was placed under probation for a period of one year. According to the petitioner, said period had expired on 7-12-1987. Thereafter, the petitioner was continued in service and according to the petitioner, the authority has extended probation period for which respondent – company has no power. The petitioner has also stated that he is liable to be exempted as per Clause – 5 of the appointment order dated 7-11-1985.

According to the petitioner, he is confirmed since 7-12-1987 and, therefore, all necessary benefits are required to be given to him, which a confirmed employee is entitled to get.

Mr.Clerk, learned advocate for the petitioner states that he has not received any instructions from his client though he has tried to get the instructions.

This petition is resisted by the respondents by filing reply. It is denied that respondent is a 'State' within the meaning of Article 12 of the Constitution of India and, therefore, this petition is not maintainable.

Mr.Prabhav Mehta, learned advocate for the respondent submitted that even otherwise the petitioner was not appointed on probation but he was given appointment as a trainee. He further submitted that the petitioner has not resumed duty since 19-12-1988 as he remained on unauthorized leave.

It is required to be noted that the matter is pending before this Court since 1989 and by this time, more than 16 years have passed and

as pointed out by Mr.Mehta, the petitioner is not in service since 19-12-1988. Considering the aforesaid aspect of the matter and since Mr.Clerk, learned advocate for the petitioner is not in a position to point out the latest position, appropriate course is to permit the petitioner to make appropriate representation pointing out all his grievances. If any representation is made by the petitioner, authority may take appropriate decision in accordance with law. The petitioner is directed to make the representation within a period of one month from today. Decision on such representation may be taken latest within a period of three months from the date of receipt of such representation. If any adverse decision is taken, it will be open for the petitioner to challenge the same before appropriate forum in accordance with law. It is clarified that giving direction to the respondent to decide the representation of the petitioner does not mean that this Court has accepted the say of the petitioner that respondent-company is a 'State' within the meaning of Article 12 of the Constitution of India and this direction is given in view of the fact that learned advocate for the respondent has stated that if any representation is made, company may take appropriate decision in accordance with law.

Subject to aforesaid direction, this petition is disposed of. Rule is discharged with no order as to costs. It is also clarified that on merits also, this Court has not expressed any opinion and the petitioner is permitted make representation as learned advocate for the petitioner is not having any instructions and he is not aware about the latest of position of the matter.

(P.B.MAJMUDAR, J.)

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